

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

United States of America
ex rel. ALEX DOE, Relator,

The State of Texas
ex rel. ALEX DOE, Relator,

The State of Louisiana
ex rel. ALEX DOE, Relator,
Plaintiffs,

v.

Planned Parenthood Federation of America, Inc.,
Planned Parenthood Gulf Coast, Inc., Planned
Parenthood of Greater Texas, Inc., Planned
Parenthood South Texas, Inc., Planned Parenthood
Cameron County, Inc., Planned Parenthood San
Antonio, Inc.,

Defendants.

CIVIL ACTION NO. 2:21-CV-
00022-Z

Date: October 26, 2022

**APPENDIX IN SUPPORT OF AFFILIATE DEFENDANTS' OPPOSITION TO
RELATOR'S MOTION TO COMPEL PRODUCTION AND APPOINTMENT OF
FORENSIC EXAMINER**

ARNOLD & PORTER KAYE SCHOLER LLP

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EX. NO.	DOCUMENT NAME	APP. PAGE NO.
A	Declaration of Tirzah Lollar	App. 001 - App. 005
P	August 2, 2022 Affiliate Defendants' Production Letter to Texas and Relator	App. 006 - App. 006
Q	Email from M. Martin to Counsel attaching Affiliate Defendants Search Terms	App. 007 - App. 009
S	Email from J. Ayers regarding June Policy Cabinet Call	App. 010 - App. 011
T	Planned Parenthood Medical Services	App. 012 - App. 012

Exhibit A

(collectively, “Affiliate Defendants”) in the above-captioned action. I have been admitted *pro hac vice* in this case. Dkt. 98. I submit this Declaration in support of Defendants’ Opposition to Relator’s Motion to Compel Production and Appointment of Forensic Examiner, Dkt. 220.

2. On August 30, 2022, Relator and Affiliate Defendants met and conferred related to Affiliate Defendants’ document production in response to Relator’s First RFPs. I attended the meet and confer on behalf of Affiliate Defendants. Counsel for Relator and Texas were also present. As of August 30, Affiliate Defendants had provided Plaintiffs with a list of the search terms they had used. Texas asked questions related to the search methodologies used, and Affiliate Defendants agreed to provide information about the methodologies used in response to Texas’s questions.

3. During the August 30 meet and confer, Relator said they thought Affiliate Defendants’ responsiveness rate and the number of documents produced should be higher. Affiliate Defendants asked Relator if there were categories of documents that Relator thought were missing from the production, but Relator did not identify any specific categories of documents, instead insisting that there should have been more emails produced. Relator did not (at this or any other meet and confer) raise concerns about Affiliate Defendants’ production of organizational charts. Relator also said that they believed there were “gaps” for certain time periods in the production, but did not identify any specific “gaps.” Relator asked if Affiliate Defendants would be willing to add additional custodians. Affiliate Defendants stated that they would consider requests for additional custodians if Relator or Texas identified persons who they thought might have responsive materials. Neither Texas nor Relator identified any specific custodians. Relator specifically stated that they were not concerned about the search terms that Affiliate Defendants had used and said that instead Relator’s concern was about what Relator believed was a too low

number of produced documents. Relator requested that Affiliate Defendants provide additional information about the number of documents that were collected and reviewed.

4. Relator filed a motion to compel production of documents requested in Relators' First RFPs on August 31, 2022. Dkt. 154. Affiliate Defendants provided the additional information requested by Relator and Texas, which included Affiliate Defendants' custodian list, on September 7, 2022. On September 20, 2022, the Court granted Relator's August 31, 2022 motion to compel, Dkt. 184. Affiliate Defendants subsequently began to undertake steps to comply with the Court's Order. *See* Dkt. 213 at 4.

5. On September 27, 2022, PPFA and Relator met and conferred related to PPFA's document production. Although the meet and confer was about PPFA's productions (and not Affiliate Defendants'), I attended the conference. Relator did not raise any concerns about Affiliate Defendants' production of documents or search methodologies during this meet and confer.

6. On September 29, Affiliate Defendants and Relator met and conferred regarding Affiliate Defendants' responses to Relator's Fourth Requests for Production, which are not at issue for purposes of Relator's Motion, Dkt. 220. I attended the meeting as did counsel for Texas. At the end of the call, Affiliate Defendants asked that Relator confirm that they do not expect Affiliate Defendants to produce all documents and communications related to Medicaid for all the Affiliate Defendants' employees in the relevant time period in order to comply with the Court's Order, Dkt. 184. Relator stated that their position is that Affiliate Defendants should produce every document or communication from every employee, or contained in every database that contains the term "Medicaid." Affiliate Defendants stated that they were making a good-faith effort to identify additional custodians most likely to have documents related to Medicaid, and planned to produce

all non-privileged documents hitting the term “Medicaid,” from a number of custodians that was larger than the initial set of custodians. Relator did not identify any specific custodians who they thought should be added to the document production or request that Affiliate Defendants use any other search terms. On September 30, 2022, Affiliate Defendants provided Plaintiffs with their expanded list of custodians for the “Medicaid” search — twenty-eight custodians in total. *See* Dkt. 201 Ex. C.

7. On October 14, 2022, Affiliate Defendants met and conferred with Relator regarding Relator’s Fifth and Sixth Requests for Production. I attended the meeting. During the meet and confer, Affiliate Defendants stated that Affiliate Defendants had searched for Center for Affiliated Learning and ARMS Connect documents related to Medicaid and determined that no responsive documents exist. Affiliate Defendants also explained that with respect to Relator’s RFPs seeking documents on PPFA’s intranet, they did not intend to produce such documents since PPFA is producing documents from PPFA’s intranet. Relator said that it was not sufficient for Affiliate Defendants not to produce such documents unless Affiliate Defendants were willing to say that the same documents produced by PPFA were accessible to Affiliate Defendants. Affiliate Defendants stated that this approach was generally okay and that they would review PPFA’s production and subsequently confirm whether the documents were accessible to Affiliate Defendants. Relator asked Affiliates to follow up on specific questions regarding three RFPs after the meet and confer; Affiliate Defendants responded on October 17 and 19. Relator did not otherwise raise any concerns about Affiliate Defendants’ production of documents or search methodologies during this meet and confer.

8. Prior to the filing of Relator’s Motion, Dkt. 220, Relator never raised any concerns regarding the search terms Affiliate Defendants were using. Prior to the filing of Relator’s Motion,

Dkt. 220, Relator never identified any specific custodians or even positions of custodians that they thought Affiliate Defendants should search.

9. Affiliate Defendants have produced more than 86,000 documents. In these productions, Affiliate Defendants have produced 65,169 documents in response to the broad “Medicaid” search. Affiliate Defendants are working in good faith to produce additional documents in response to all of Relator’s requests for production, consistent with their written responses and subsequent communications with Relator.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 26, 2022.

s/ Tirzah S. Lollar
Tirzah S. Lollar

Exhibit P



Meghan C. Martin
Staff Attorney
(202) 942-5443
meghan.martin@arnoldporter.com

August 2, 2022

VIA E-MAIL

Raymond Charles Winter
Assistant Attorney General
Chief, Civil Medicaid Fraud Division
PO Box 12548
Austin, Texas 78711-2548
Raymond.winter@oag.texas.gov

Andrew B. Stephens
Hacker Stephens LLP
108 Wild Basin Rd South
Suite 250, Austin, TX 78746
andrew@hackerstephens.com

Re: Productions PPGT001, PPGT002, PPST001, PPST002, PPGC001, PPGC002

Dear Mr. Winter and Mr. Stephens,

Affiliate Defendants are producing documents bearing bates numbers PPGC00000001-PPGC00012192, PPGT00000001-PPGT00004594, PPST00000001-PPST00033689 via secure transfer. This is the first of Affiliate Defendants' rolling productions of responsive nonprivileged documents from custodial and non-custodial sources identified as responsive to Texas and Relator's discovery requests. Affiliate Defendants are producing these materials based on the understanding that any inadvertent production of privileged information shall not constitute a waiver of any applicable privilege or protection (ECF # 72).

Documents in this production have been designated and stamped in accordance with Court's Protective Order (ECF # 133). Certain documents have been designated as Confidential and certain documents have been designated as Confidential Attorney Eyes Only.

Very truly yours,

/s Meghan C. Martin
Meghan C. Martin

Exhibit Q

From: [Martin, Meghan C.](#)
To: [Raymond Winter](#); [Lollar, Tirzah](#); [Andrew Stephens](#)
Cc: [Eugenia Krieg](#); [Drew Wright](#); [Sinty Chandy](#); [Christopher Hilton](#); [Amy Hilton](#); [Benjamin Walton](#); [Heather Hacker](#); [Sheehan, Christian](#); [Odell, Christopher M.](#); [Margolis, Craig D.](#); zzz.External.lgodesky@omm.com; brown@blackburnbrownlaw.com; zzz.External.jchapa@omm.com; [Michael Moore](#); zzz.External.dashby@omm.com
Subject: RE: Case 2:21-cv-00022-Z United States of America et al v. Planned Parenthood Federation of America Inc et al
Date: Thursday, August 25, 2022 11:59:43 AM
Attachments: [Affiliate Defendants Search Terms.pdf](#)
[image001.png](#)

Ray and Andrew:

In response to Texas providing their search terms, Affiliate Defendants are providing similar information. In preparing to respond to Texas's and Relator's First Sets of RFPs, the Affiliates Defendants identified 8 custodians who would have emails and documents responsive to those requests. Those custodians' full mailboxes were collected and once the mailboxes were loaded to Affiliates Defendants' vendor's processing platform, the attached list of search terms were used to determine the search universe. The search hits produced approximately 36,000 emails with families to be reviewed. Those documents were reviewed and responsive non-privileged documents have been produced in the rolling production made by Affiliates Defendants.

During the course of review, Affiliates Defendants learned that the full mailboxes of 2 of the 8 custodians were not initially collected correctly. Those mailboxes were recollected and upon running search terms, resulted in a new universe of approximately 77,000 emails with families from those 2 custodians. Prior to the Court's issuance of the Order [Dkt. 139] adopting the parties' stipulation and proposed order regarding production of electronically stored information and hard copy documents, Affiliate Defendants decided to use the Continuous Active Learning ("CAL")/TAR methodology to use the coding from the initial set of 36,000 emails to determine what percentage of the 77,000 would be review. CAL was then used to go through 3 more rounds of review to determine if more documents needed to be reviewed. Any responsive non-privileged documents from the set of reviewed documents have been produced in our rolling productions made by Affiliates Defendants.

Please let me know if you have any questions or if you would like to discuss further.

Regards,
Meghan

Meghan Martin
Attorney and Advisor | [Bio](#)



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From: Michael Moore <Michael.Moore@oag.texas.gov>

Sent: Wednesday, August 3, 2022 6:02 PM

To: Lollar, Tirzah <Tirzah.Lollar@arnoldporter.com>; zzz.External.dashby@omm.com
<dashby@omm.com>

Cc: Raymond Winter <Raymond.Winter@oag.texas.gov>; Eugenia Krieg
<Eugenia.Krieg@oag.texas.gov>; Drew Wright <Drew.Wright@oag.texas.gov>; Sinty Chandy
<Sinty.Chandy@oag.texas.gov>; Christopher Hilton <Christopher.Hilton@oag.texas.gov>; Amy Hilton
<Amy.Hilton@oag.texas.gov>; Benjamin Walton <Benjamin.Walton@oag.texas.gov>; Andrew
Stephens <andrew@hackerstephens.com>; Heather Hacker <heather@hackerstephens.com>;
Sheehan, Christian <Christian.Sheehan@arnoldporter.com>; Odell, Christopher M.
<Christopher.Odell@arnoldporter.com>; Margolis, Craig D. <Craig.Margolis@arnoldporter.com>;
zzz.External.lgodesky@omm.com <lgodesky@omm.com>; Ramer, Paula
<Paula.Ramer@arnoldporter.com>; brown@blackburnbrownlaw.com;
zzz.External.jchapa@omm.com <jchapa@omm.com>

Subject: Case 2:21-cv-00022-Z United States of America et al v. Planned Parenthood Federation of
America Inc et al

External E-mail

Tirzah and Danny –

Thank you again for taking the time to confer with us Monday and yesterday. Pursuant to our discussion, Texas will search custodial files for relevant HHSC and HHSC-OIG witnesses using the attached search terms. We have asked HHSC to begin the searches using the attached terms. We remain available to meet and confer about the terms. Please let us know if you would like to discuss.

Sincerely,

Michael J. Moore
Assistant Attorney General
Civil Medicaid Fraud Division
(512) 936-1449
michael.moore@oag.texas.gov

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The contents of this message and any attachments are privileged and confidential. It is the specific intent of the sender that no part of this message or an attachment shall be disclosed to any third party unless necessary for the furtherance of rendition of professional legal services. TRE 503 and TRCP 192.

SEARCH TERMS

1	Medi-caid
2	"Managed care"
3	MCO
4	"Fee for service" OR fee-for-service
5	hhs.tx.gov
6	dhh.Louisiana.gov
7	FFS
8	DHH
9	TMHP
10	OIG
11	Recoup*
12	CMS
13	"provider agreement"
14	"qualified provider"
15	revocation OR revoke
16	"Cecile Richards" AND (termination OR medicaid OR texas OR louisiana)
17	injunct*
18	TRO
19	repay*
20	"en banc"
21	"grace period"
22	"fifth circuit"
23	HHSC
24	HHSC-OIG
25	Overpayment
26	HHS
27	Wachino
28	Centers w/5 (Medicare OR "Medicaid services")
29	Health w/2 "human services"
30	Kleibert
31	Termin* AND any other search term in line 1-30
32	Refund* AND any other search term in line 1-30
33	Medicaid AND any other search term in line 1-30
34	
35	Medicaid AND (enroll* OR participat* OR eligibil* OR accred* OR submit* OR submission OR receiv* OR receipt OR terminat* OR qualif* OR refund*)

Exhibit S

From: Ayers, Jacqueline <jacqueline.ayers@ppfa.org>
To: Atkinson, Tanya; Lambrecht, Ken; Lisa Gardner; Skinner, Amanda; Welch, Jennifer
CC: Bernardo, Carmina; Halley, Talitha; Karen Stone; Custer, Kim; Lineswala, Alisha; Linton, Melaney; Sye, Tait; Tamara Kramer; Torrez, Marya; Yenyo, Amy
Sent: 6/23/2021 1:51:57 PM
Subject: Re: June Monthly Policy Cabinet Call

Hello CEO Colleagues,

I'm sorry to have missed what sounds like an engaging meeting last week. We will be following up on a number of the items discussed, including reviewing a plan for resource sharing in our next meeting. In the meantime, I wanted to share some of the resources that were mentioned on the call (linked and attached as requested).

Please don't hesitate to reach out to me or any of the presenters with questions or additional input.

1. [Medicaid Reimbursement Toolkit](#)
2. [Strengthening Sexual and Reproductive Health through Medicaid Managed Care Contracting Toolkit](#)
3. [State Medicaid FFS Family Planning Rate Comparison Tool](#) (developed by the state of Maine)
4. [318 Funding Announcement](#)
5. [PPFA Policy Guide -- Pharmacy by Mail Programs](#)
6. [Prescription Fulfillment Services and 340B](#)
7. [HCIP Ten-Year Report](#)

Jacqueline
202-779-3371 cell

On Fri, Jun 11, 2021 at 4:19 PM Ayers, Jacqueline <jacqueline.ayers@ppfa.org> wrote:
Hello all,

Our June monthly policy call will be held 2:00pm EST on Monday, June 14th. We know there is a lot happening right now and many things to discuss around abortion access but are also aware the full CEO group is holding space for SCOTUS and TX litigation.

For now, this group will continue to be focused on advancing our administrative and legislative agendas. Welcome your thought leadership each month!

And our Senior Director, Public Policy & Strategy Marya Torrez will help facilitate next week's call due to a conflict on my end.

Thanks and have a nice weekend

Jacqueline

Have a nice weekend!

CEO Policy Cabinet Call Agenda 6.14.21

- I. Welcome
- II. 340B
- III. State Medicaid Outreach to HHS

Google Meet joining info

Video call link: <https://meet.google.com/akc-nhap-afn>

Or dial: +1 302-314-6591 PIN: 473473360

More phone numbers: <https://tel.meet/akc-nhap-afn?pin=4072696191821>

--

Jacqueline C. Ayers, (She, Her, Hers)
Vice President, Government Relations & Public Policy
Planned Parenthood Federation of America
Planned Parenthood Action Fund
P: 202.973.4872
C: 202.779.3371

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Jacqueline C. Ayers, (She, Her, Hers)
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Exhibit T

Physician Recruiting, Orientation and Ongoing Support

PPFA Medical Services is dedicated to supporting affiliates in their delivery of high-quality health care. Ensuring affiliates have the physician staff they need and that those staff are supported is critical to that mission. As such, the Medical Services group provides a variety of services to support affiliates and their physician staff.

Physician Recruitment

Deborah Nucatola, MD, Senior Director, Medical Services serves as a liaison to the Fellowship in Family Planning as well as to the Ryan and RHEDI Residency training programs in abortion care. Medical Services maintains a list of open physician positions at affiliates and shares this list with the programs quarterly. In addition, Dr. Nucatola attends the Fellowship Career Development Seminar every July and sends a recruitment letter to residency programs in Family Medicine and Obstetrics and Gynecology every fall. Medical Services also maintains a list of physicians who have expressed interest in providing services at a Planned Parenthood health center. If you are currently recruiting or planning to recruit a physician in the next year, we may be able to assist. At a minimum, please share your listings with us.

Medical Director Orientation

There are several Medical Services products and programs to orient medical directors to the world of Planned Parenthood.

- [Medical Director Orientation Manual](#). This manual is revised annually and provides readers with an introduction to the role of an affiliate medical director, the *PPFA Manual of Medical Standards and Guidelines* and the PPFA National Medical Committee. It also provides an overview of the PPFA National Office, the Federation and the resources and support that are available.
- [Directory of Affiliate Medical Directors](#). This directory allows medical directors to find contact information for their peers as well as a list of their specialties and interests.
- [Medical Directors Orientation at the National Medical Conference](#). Each fall, as part of the PPFA National Medical Conference, Medical Services hosts an in-person orientation for medical directors where they have an opportunity to meet their peers and colleagues from the PPFA National Office.

Medical Director Mentoring Program

Medical Services works with Medical Directors' Council (MeDC), the affinity group for affiliate medical directors, to administer the Medical Director Mentoring Program. Through this program, affiliate medical directors are paired with a medical director mentor and connected with their regional MeDC representative to help them navigate the world of Planned Parenthood.

Ongoing Support

Medical Services staff are always available to assist affiliate medical directors with clinical and administrative questions. Questions should be sent to medicalservices@ppfa.org.

For more information contact Kate Carlucci, Project Specialist at kate.carlucci2@ppfa.org.